



# UNITED STATES PATENT AND TRADEMARK OFFICE

UNITED STATES DEPARTMENT OF COMMERCE  
United States Patent and Trademark Office  
Address: COMMISSIONER FOR PATENTS  
P.O. Box 1450  
Alexandria, Virginia 22313-1450  
www.uspto.gov

| APPLICATION NO.   | FILING DATE | FIRST NAMED INVENTOR | ATTORNEY DOCKET NO.        | CONFIRMATION NO.       |
|---|-------------|----------------------|----------------------------|------------------------|
| 10/802,542  | 03/16/2004  | Konstantinos Roussos | 5693P046                   | 3726                   |
| 48102   | 7590        | 10/04/2007           |                            |                        |
| NETWORK APPLIANCE/BLAKELY<br>1279 OAKMEAD PARKWAY<br>SUNNYVALE, CA 94085-4040 |             |                      | EXAMINER<br>JEAN, FRANTZ B |                        |
|   |             |                      | ART UNIT<br>2154           | PAPER NUMBER           |
|   |             |                      | MAIL DATE<br>10/04/2007    | DELIVERY MODE<br>PAPER |

**Please find below and/or attached an Office communication concerning this application or proceeding.**

The time period for reply, if any, is set in the attached communication.

**Office Action Summary**

Application No.

10/802,542

Applicant(s)

ROUSSOS ET AL.

Examiner

Frantz B. Jean

Art Unit

2154

-- The MAILING DATE of this communication appears on the cover sheet with the correspondence address --

**Period for Reply**

A SHORTENED STATUTORY PERIOD FOR REPLY IS SET TO EXPIRE 3 MONTH(S) OR THIRTY (30) DAYS, WHICHEVER IS LONGER, FROM THE MAILING DATE OF THIS COMMUNICATION.

- Extensions of time may be available under the provisions of 37 CFR 1.136(a). In no event, however, may a reply be timely filed after SIX (6) MONTHS from the mailing date of this communication.
- If NO period for reply is specified above, the maximum statutory period will apply and will expire SIX (6) MONTHS from the mailing date of this communication.
- Failure to reply within the set or extended period for reply will, by statute, cause the application to become ABANDONED (35 U.S.C. § 133). Any reply received by the Office later than three months after the mailing date of this communication, even if timely filed, may reduce any earned patent term adjustment. See 37 CFR 1.704(b).

**Status**

- 1) ☒ Responsive to communication(s) filed on 16 March 2004.
- 2a) ☐ This action is **FINAL**. 2b) ☒ This action is non-final.
- 3) ☐ Since this application is in condition for allowance except for formal matters, prosecution as to the merits is closed in accordance with the practice under *Ex parte Quayle*, 1935 C.D. 11, 453 O.G. 213.

**Disposition of Claims**

- 4) ☒ Claim(s) 1-30 is/are pending in the application.
- 4a) Of the above claim(s) \_\_\_\_\_ is/are withdrawn from consideration.
- 5) ☐ Claim(s) \_\_\_\_\_ is/are allowed.
- 6) ☒ Claim(s) 1-30 is/are rejected.
- 7) ☐ Claim(s) \_\_\_\_\_ is/are objected to.
- 8) ☐ Claim(s) \_\_\_\_\_ are subject to restriction and/or election requirement.

**Application Papers**

- 9) ☐ The specification is objected to by the Examiner.
- 10) ☐ The drawing(s) filed on \_\_\_\_\_ is/are: a) ☐ accepted or b) ☐ objected to by the Examiner.  
Applicant may not request that any objection to the drawing(s) be held in abeyance. See 37 CFR 1.85(a).  
Replacement drawing sheet(s) including the correction is required if the drawing(s) is objected to. See 37 CFR 1.121(d).
- 11) ☐ The oath or declaration is objected to by the Examiner. Note the attached Office Action or form PTO-152.

**Priority under 35 U.S.C. § 119**

- 12) ☐ Acknowledgment is made of a claim for foreign priority under 35 U.S.C. § 119(a)-(d) or (f).
- a) ☐ All b) ☐ Some \* c) ☐ None of:
- ☐ Certified copies of the priority documents have been received.
  - ☐ Certified copies of the priority documents have been received in Application No. \_\_\_\_\_.
  - ☐ Copies of the certified copies of the priority documents have been received in this National Stage application from the International Bureau (PCT Rule 17.2(a)).
- \* See the attached detailed Office action for a list of the certified copies not received.

**Attachment(s)**

- 1) ☒ Notice of References Cited (PTO-892)
- 2) ☐ Notice of Draftsperson's Patent Drawing Review (PTO-948)
- 3) ☐ Information Disclosure Statement(s) (PTO/SB/08)  
Paper No(s)/Mail Date \_\_\_\_\_
- 4) ☐ Interview Summary (PTO-413)  
Paper No(s)/Mail Date. \_\_\_\_\_
- 5) ☐ Notice of Informal Patent Application
- 6) ☐ Other: \_\_\_\_\_

### **DETAILED ACTION**

This is a first office action in response to application for patent filed on 03/16/04. Claims 1-30 are presented for examination.

#### ***Claim Rejections - 35 USC § 102***

The following is a quotation of the appropriate paragraphs of 35 U.S.C. 102 that form the basis for the rejections under this section made in this Office action:

A person shall be entitled to a patent unless –

(b) the invention was patented or described in a printed publication in this or a foreign country or in public use or on sale in this country, more than one year prior to the date of application for patent in the United States.

Claims 1-30 are rejected under 35 U.S.C. 102(b) as being anticipated by Alexander, III et al. hereinafter Alexander US patent number 6,513,155.

As per claim 1, Alexander teaches a method comprising: automatically discovering counters for a remote device in a network (fig 18; col 11 lines 45-50); selecting at least one counter (col. 14 lines 13-15); and collecting data for each selected counter (col. 20 lines 35-47).

As per claim 2, Alexander teaches predefining a number of counter group templates comprising a plurality of counters (fig 18; col. 11 lines 45-64).

As per claim 3, selecting one of the predefining counter group (fig 18; col. 11 lines 45-64).

As per claim 4, Alexander teaches automatically discovering performance objects (col. 24 lines 17-30).

Art Unit: 2154

As per claim 5, Alexander teaches instantiating the selected counters based on predefined mapping performance (col. 24 lines 60-67).

As per claim 6, Alexander teaches storing the collected data for the counters in each group separately (col. 11 lines 45-59).

As per claims 7-8, Alexander teaches allowing a user to select one of a plurality of predefined views and presenting data to the user, in accordance with selected view (see fig 18).

As per claim 9, Alexander teaches automatic discovering and data collecting are performed in parallel (col. 24 lines 17-21).

As per claims 10-12, they contain the same limitations as discussed above in claims 1-9, therefore, they are rejected under the same rationale.

As per claim 13, Alexander teaches a method comprising: for each tuple containing a counter and an object fig 18); and for at least one remote device in a network that has the particular object and counter contained in the tuple, automatically sampling the counter (col. 17 lines 34-67).

As per claim 14, Alexander teaches sampling rate (col. 17 lines 41-42).

As per claim 15, Alexander teaches saving results of sampling (col. 18 lines 19 et seq).

As per claims 16-17, Alexander teaches a plurality of counters, a sample period, and a sample buffer size (col. 16 lines 45-67; col. 11 lines 29-33).

As per claim 18, Alexander teaches displaying sample data for each counter (fig 32).

Art Unit: 2154

As per claims 19-30, they contain the same limitations as discussed above in claims 1-18. Therefore, they are rejected under the same rationale. Furthermore, Alexander teaches a processor (202, 204) and a memory (208, 209).

Any inquiry concerning this communication or earlier communications from the examiner should be directed to Frantz B. Jean whose telephone number is 571-272-3937. The examiner can normally be reached on 8:30-6:00 M-f.

If attempts to reach the examiner by telephone are unsuccessful, the examiner's supervisor, Nathan J. Flynn can be reached on 571-272-1915. The fax phone number for the organization where this application or proceeding is assigned is 571-273-8300.

Information regarding the status of an application may be obtained from the Patent Application Information Retrieval (PAIR) system. Status information for published applications may be obtained from either Private PAIR or Public PAIR. Status information for unpublished applications is available through Private PAIR only. For more information about the PAIR system, see <http://pair-direct.uspto.gov>. Should you have questions on access to the Private PAIR system, contact the Electronic Business Center (EBC) at 866-217-9197 (toll-free). If you would like assistance from a USPTO Customer Service Representative or access to the automated information system, call 800-786-9199 (IN USA OR CANADA) or 571-272-1000.

Frantz Jean



**FRANTZ B. JEAN**  
PRIMARY EXAMINER